

Hon. Richard Jones
Hon. James P. Donohue

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

KYLE LYDELL CANTY,

Plaintiff,

vs.

CITY OF SEATTLE, et al.,

Defendants.

NO. 2:16-CV-01655-RAJ-JPD

CITY OF SEATTLE DEFENDANTS'
SUPPLEMENTAL REPLY IN SUPPORT
OF MOTION TO DISMISS OR IN THE
ALTERNATIVE TO COMPEL
DISCOVERY

NOTED ON MOTIONS CALENDAR:
DECEMBER 1, 2017

I. INTRODUCTION

Defendants City of Seattle, Officer Marshall Coolidge, Sean Culbertson, Timothy Renihan and Officer Hancock (hereinafter collectively "the City") submit this supplemental reply memorandum in support of their motion to dismiss or in the alternative to compel discovery.

II. ARGUMENT

The City timely filed and served Plaintiff with a motion to dismiss based on his willful discovery violations, or in the alternative to compel discovery, having noted it for consideration on October 27, 2017. The Court re-noted the City's motion on December 1, 2017 to allow Plaintiff a final opportunity to respond to this dispositive motion. Dkt. 149.

1 Any response in opposition to the motion was due to be filed and served no later than
 2 November 27, 2017. *Id.*

3 City Defendants' counsel was advised that Plaintiff was released from the Washington
 4 Corrections Center on October 30, 2017, with no forwarding address. Declaration of Amee J.
 5 Tilger (Tilger Decl.), Ex. A and Ex. B. Counsel sent by certified mail a letter to Plaintiff to his
 6 last known addresses, asking Plaintiff to provide the court and counsel his current contact
 7 information. Tilger Decl., Ex. C. Enclosed with the letter was a copy of the Court's Order
 8 Striking Plaintiff's Submissions and Re-Noting Dispositive Motions [Dkt. 149]; City of
 9 Seattle's Interrogatories and Requests for Production to Plaintiff; and authorizations and
 10 stipulations for Plaintiff's medical records. Tilger Decl., Ex. C. Both certified letters were
 11 claimed and signed for by someone on Plaintiff's behalf. Tilger Decl., Ex. D. To date, counsel
 12 has had no contact with Plaintiff, and Plaintiff has filed no response to the City's motion.
 13 Tilger Decl., ¶ 7.

14 "Except for motions for summary judgment, if a party fails to file papers in opposition
 15 to a motion, such failure may be considered by the court as an admission that the motion has
 16 merit." LCR 7(b)(2). Here, the City's motion should be granted because Plaintiff has failed to
 17 file any opposition to the City's motion, despite being afforded additional time to do so. This
 18 case should be dismissed based on Plaintiff's wilfull discovery violations, which include
 19 refusing to appear at a duly noted deposition, failing to respond to written discovery requests,
 20 failing to sign authorizations for relevant medical records, refusing to accept documents that
 21 are mailed to him, and refusing even to discuss these matters with counsel. Plaintiff has failed
 22 to demonstrate even the most minimal intention of prosecuting this action by updating his
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1 address with the court and counsel upon his release from custody. In light of these recent
2 events, the City simply asks the Court to dismiss the matter.

3 **III. CONCLUSION**

4 For all the forgoing reasons, the court should dismiss this matter with prejudice.

5 DATED this 1st day of December, 2017.

6
7 s/ Amee J. Tilger

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15 Attorneys for Defendants City of Seattle,

16 Officer Marshall Coolidge, Sean Culbertson,

17 Timothy Renihan and Officer Hancock

CERTIFICATE OF SERVICE

I certify that on the 1st day of December, 2017, I electronically filed the foregoing documents with the Clerk of the Court using CM/ECF E-Filing Systems, and notifying of such filing to the following:

Pro se Plaintiff, Kyle Lydell Canty 1700 7 th Avenue Suite 116, Unit 365 Seattle, WA 98101	(X) U.S. Mail
Samantha D. Kanner, WSBA #36943 Deputy Prosecuting Attorney King County Prosecuting Attorney's Office 500 Fourth Avenue, 9 th Floor Seattle, WA 98104 (206) 296-8820 SamanthaKanner@kingcounty.gov Attorney for King County	(X) ECF Electronic Filing

I certify under the penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 1st day of December, 2017, in Seattle, Washington.

s/Courtney Grubb
COURTNEY GRUBB, Legal Assistant
courtneyg@fjtlaw.com